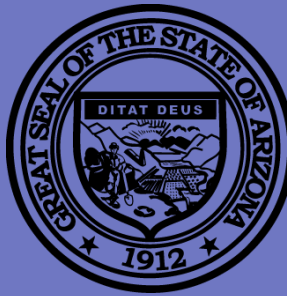


CRIME VICTIMS' GUIDE



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A MESSAGE FROM ATTORNEY GENERAL, TERRY GODDARD

Crime impacts us all— our families, communities, and state. As a victim of crime you know better than anyone the shattering effect of crime. As Arizona's Attorney General, I am committed to a system of justice that ensures that those who do harm to others are held responsible. I am equally dedicated to a justice system that remembers, respects, and includes the victims of crime.

Fortunately, over the past several years, there has been increasing sensitivity to the needs and rights of crime victims. In 1990, Arizona voters passed an initiative amending our State Constitution to provide a Victims Bill of Rights. In 1991, the Arizona Legislature passed laws to define the application of these Constitutional rights to the criminal justice process, and in 1996 to the juvenile justice process. In 1992, the Arizona Supreme Court amended its Rules of Criminal Procedure to reflect the rights of victims in criminal court proceedings.

Today, as a result of these legal changes, all state, county, and municipal criminal justice agencies and courts in Arizona are charged with performing duties and services to ensure a victim's participation and access to justice.

I hope you will find the Arizona Crime Victims' Guide informative and useful. The Guide introduces the Attorney General's Office of Victim Services, describes how a case progresses through the criminal justice system and your rights at each stage. In addition, it advises you of services that may be available, where to go for help and how to obtain more information. With your involvement, and the continued responsiveness of all who are involved in the administration of justice, we will protect the rights of crime victims.

TERRY GODDARD
ARIZONA ATTORNEY GENERAL

The Attorney General's Office of Victim Services gives permission to anyone wishing to copy and distribute this Guide, in whole or in part. No modifications of the text may be made, however, and the Office of Victim Services must be advised of its use and distribution.

VICTIM ASSISTANCE

You may be facing many problems as a result of your victimization. Victims and witnesses often experience trauma resulting from a crime, as well as from their involvement with the criminal justice process. They often feel isolated and confused, and do not know where to turn for practical advice or support. Further, crime victims often need immediate help: food, clothing, or temporary housing.

AGENCIES AND SERVICES

Agencies such as victim/witness assistance programs, sexual assault centers, child abuse treatment programs and domestic violence shelters are established throughout the state to help crime victims regain control over their lives. Supported by government and private funds, these programs provide emergency and long-term support to victims and their families. If your community has a sexual assault center or domestic violence shelter, services which may be available include: emergency safe homes or shelters; 24-hour crisis telephone lines; follow-up crisis and long-term counseling; advocating for your needs and rights; accompanying you to medical examinations; transportation; and child care.

Each community provides different kinds of crime victim/witness services. The law enforcement agency that has responsibility for investigating the criminal offense against you (typically a police department or sheriff's office) is required by law to inform you of the availability, if any, of crisis intervention services and emergency and medical services, and provide you with the telephone numbers of private and public victim assistance programs, including programs that provide counseling, treatment, and other needed services. In cases of domestic violence, the law also requires that the investigating agency inform victims of the procedures and resources available for their lawful protection, including, how to obtain an *Order of Protection* from a court.

Local victim/witness assistance programs are established in each of Arizona's fifteen counties. They can inform you of other specific services available in your community. (See last insert of this Guide for the phone number of the victim/witness program nearest you.) If you need help in identifying and accessing assistance services, you may want to call your local law enforcement agency or County Attorney's Office.

Attorney General Victim Services

The Attorney General's Office is frequently called upon to prosecute crimes that, were it not for some form of existing conflict locally, would be prosecuted by a County Attorney's Office. If you are a victim in such a case, the Attorney General's *Office of Victim Services* is established to assist you in all of the ways that a local victim/witness program would (see Guide insert for services listing). Program staff also assist victims in criminal matters that originate with the Attorney General which include many white-collar, organized crime and fraud prosecutions. Lastly, because the Attorney General has jurisdiction in almost all criminal direct appeals to state and federal courts, the Attorney General's *Office of Victim Services* ensures that all victims in this stage of the criminal justice process receive their full constitutional and statutory rights, as well as continued services to meet the unique needs of victims following conviction. While this *Guide* is primarily for the many victims of crimes prosecuted by the Attorney General, staff and advocates in the *Office of Victim Services* are willing and able to assist you in any way that they can whether the crime that has been committed against you is being handled by the Attorney General or another criminal justice agency.

VICTIM ADVOCACY...You're Not Alone

Employed or affiliated with many criminal justice and non-profit agencies, Crime Victim Advocates are trained and caring individuals whose primary purpose is to inform, support and accompany victims and significant others through the aftermath of crime. Advocates can intervene or act as a liaison on your behalf, ensuring that your rights are afforded and that your needs for help and services are met and coordinated. Advocates can also be a visible support and resource to crime victims as a case makes its way through the justice process. By making contacts on your behalf, providing case status information and an orientation to the judicial system advocates can minimize the confusion, frustration or further stress that is often felt by victims as participants in the justice process.

Confidentiality

You may have the lawful right to have what you say to your crime victim advocate be kept private and confidential. This means that the advocate cannot divulge information obtained in their service to you, with some exception,* unless you consent to its release. Information regarding crime victim compensation benefits and restitution may be disclosed without your consent. Upon initial contact between yourself and a victim advocate, it is important that you ask the advocate to explain your right to privileged communication, if any, and what it means, including any exceptions.

*By law, advocate-victim communication is not confidential if an advocate knows that a victim will give, or has given, false testimony, or if the communication contains information that would clear the accused person of blame.

FINANCIAL HELP . . . *Crime Victim Compensation Benefits*

If you are a victim of a violent crime or a surviving dependent of a victim who has died as the result of a criminal act, you may be eligible for compensation of certain financial expenses through Arizona's *Crime Victim Compensation Program*. Administered in each of the state's fifteen counties, primary funding for the program comes from fines and penalty assessments imposed upon convicted felons. Compensable losses include: medical and dental expenses, mental health counseling, lost wages, and funeral costs. The program does not compensate for loss of property or property damage. To be eligible, generally, for compensation under the program: 1) your victimization must have occurred in Arizona, 2) the crime has to have been reported to a law enforcement agency within 72 hours of its occurrence, 3) the economic loss which you incurred must have been as a direct result of the crime, 4) as a direct result of the crime, also, you must have sustained physical injury or extreme mental distress, and 5) an application for compensation must be filed within two years of the time the crime occurred. To obtain an application or more information on the *Crime Victim Compensation Program*, contact your county Crime Victim Compensation Administrator (see last insert of Guide for phone number).

ATTORNEY GENERAL VICTIM SERVICES

Victims of crime in Arizona are afforded a wide range of services through the Attorney General's *Office of Victim Services*. Available services include:

- Assessing with you, your needs as a result of the crime;
- Assisting you in obtaining crisis intervention, counseling services, emergency shelter and follow-up counseling for your emotional, personal, financial and employment problems resulting from the crime;
- Information on filing Orders of Protection and Injunctions Against Harassment;
- Helping you file for compensation through your local Crime Victim Compensation Board;
- Assisting and supporting you through all justice proceedings, we can:
 - Explain the justice system to you;
 - Conduct a court visit/orientation with you prior to a scheduled proceeding;
 - Escort and support you through court appearances, depositions, or interviews;
 - Help you to get back property held for evidence;
 - Keep you updated on the case and its disposition;
 - Advocate for a court waiting area where you may be secure from the defendant, the defense witnesses and the defendant's family and friends;
 - Assist you in completing a Victim Impact Statement for use at the time of sentencing;
 - Assisting you in determining your financial losses as a result of the crime and as an aid to the prosecutor in recommending court-ordered restitution; and,
 - Obtain and provide you with a copy of the Pre-sentence Report.
- Intervening with your employer, landlord, or creditors to minimize additional losses because of the crime's impact on you;
- Assisting you in the conduct of asset searches, and filing of restitution liens;
- Advocating your rights as a crime victim with other justice agencies;
- Notifying you of all post-conviction relief and direct appeal proceedings, and of the outcome of those proceedings; and,
- Intervening on your behalf with the media to assure your privacy needs and wishes are respected.

To obtain information or inquire further about these services, please call (602) 542-4911 in Phoenix, (520) 628-6456 in Tucson. Any one of the victim advocates in these offices will be able to help you.

VICTIM'S BILL OF RIGHTS

As a victim of a crime you have the right:

To be treated with fairness, respect and dignity, and to be free from intimidation, harassment or abuse throughout the criminal justice process.

To be informed, upon request, when the accused or convicted person is released from custody or has escaped.

To be present at and, upon request, to be informed of all criminal proceedings when the defendant has the right to be present.

To be heard at any proceeding involving a post arrest release decision, a negotiated plea and sentencing.

To refuse an interview, deposition or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.

To confer with the prosecution, after the crime has been charged, before trial, or before any disposition of the case, and to be informed of the disposition.

To receive a copy of the pre-sentence report relating to the crime against you, when it is available to the defendant.

To receive prompt restitution from the person or persons convicted of the criminal conduct that caused your loss or injury.

To be heard at any proceeding when any post conviction release from confinement is being considered.

To a speedy trial or disposition, and a prompt and final conclusion of the case after the conviction and sentence.

To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect your rights as a victim, and to have these rules be subject to amendment or repeal by the Legislature to ensure the protection of these rights.

To be informed of your constitutional rights.

Arizona Constitutional Rights for Crime Victims, Article II, Section 2.1

THE CRIMINAL JUSTICE SYSTEM

Your rights as a crime victim begin at the time a crime is reported and continue throughout the criminal justice process. To receive the full benefit of your rights and to participate in the criminal justice system, it is important to understand how a criminal case progresses. This simplified overview may not answer all of your questions, but hopefully will address some of your immediate concerns about what to expect.

A case progresses through the criminal justice system in many steps, or stages (see last page of this insert). The overview that follows might suggest that the administration of justice is an orderly flow of decision-making that begins with the investigation of a criminal offense and ends with a prison sentence. However, because the justice process is structured to guarantee due process of law at each of its many stages, questions of definition and interpretation can complicate criminal procedure and create frustrating delays. In any event, your opportunity to exercise your rights will be enhanced as you learn how the system works.

Please note: Use of the pronoun "he" is used throughout this Guide for purpose of reader ease and simplicity. Use of this pronoun is in no way intended to convey gender-specific assumptions.

INTRODUCTION

Criminal justice in the United States exists to control and prevent crime. Criminal cases are those that involve the commission of acts that are prohibited by law and punishable by a jail or prison sentence. Law enforcement agencies are charged with the prevention of crime and the apprehension of criminal offenders. Courts have the duty to assure justice and due process through determining innocence or guilt of the accused and sentencing those who are convicted. The role of correctional agencies in this process involves the control, custody and supervision of persons convicted of crime.

LAW ENFORCEMENT INVESTIGATION ... THE PROCESS BEGINS

Although the first phase of the criminal justice process would seem logically to be arrest, this is usually the case only when a crime is directly observed by a law enforcement officer. More often, the process begins with a report or complaint made to a law enforcement agency that a crime has occurred, followed by the agency responding with some level of investigation. While an initial investigation is performed in many cases by a police officer responding to a scene shortly after a crime occurs, prearrest investigations are also initiated when knowledge is received from informers, or through surveillance. Investigative activities include examining the crime scene, searching for physical evidence, interviewing victims and witnesses, and attempting to locate the perpetrator. If a suspect is not taken into custody immediately, an initial report may be turned over to a detective who specializes in investigating the particular type of crime that occurred. The detective's job in furthering the investigation could include contacting victims and witnesses for formal statements and photographic line-ups.

When a suspect is identified and sufficient evidence is believed to exist, the case is presented to a *prosecutor* for review. Prosecutors are the chief law enforcement officers within their jurisdictions. (The Attorney General is the chief law enforcement and legal officer for the state.) As lawyers for the government, prosecutors represent the interest of the community.

See Guide Insert, "Exercising Your Right – Law Enforcement Investigation" for a listing of your rights during this stage.

PROSECUTORIAL REVIEW AND FORMAL CHARGING

The prosecutor reviews the law enforcement or investigating agency's report and assesses whether there is sufficient evidence to support a conviction. The prosecutor may request additional investigative work. The standard for conviction in criminal matters is that a judge or jury be convinced *beyond a reasonable doubt* that the alleged offender is guilty of the crime(s) committed. If the prosecutor finds that the report and evidence are sufficient and there is a reasonable likelihood of conviction, he or she will file a *criminal complaint* or seek an *indictment* from a grand jury. The criminal complaint is a charging document presented to a court magistrate (judge), who will issue either a warrant authorizing the arrest of the suspect or a summons requiring that the suspect appear in court on a specific day for a *preliminary hearing* (in felony matters only).

Turn Down: A prosecutor's decision to decline case prosecution (not to file charges) is commonly referred to as a "turn down." Rules of ethics governing the legal profession prohibit prosecutors from filing charges in cases they do not believe meet the high standard for conviction in criminal matters. In cases where the suspect's alleged conduct could be charged as an offense under more than one law, the prosecutor has discretion to decide what charges to file, if any. Many factors are involved in deciding whether, or how, to prosecute.

See Guide Insert, "Exercising Your Rights – Prosecutorial Review/Charging" for a listing of your rights during this stage.

UPON ARREST

An arrest is simply the action of taking a person into custody for the purpose of charging him or her with a crime. A law enforcement officer makes an arrest when he has directly observed the crime committed or at some later time when an investigation suggests that the suspect probably is the offender (called probable cause). When a person is arrested, he is taken to jail and "booked." Booking is the administrative recording of an arrest, conducted at a jail, and can include fingerprinting and photographing the suspect.

When an accused person is arrested, he must be brought before a judge within 24 hours for an *initial appearance*, or be released. At an initial appearance, the judge gives formal notice of the charge(s) to the accused, who may now be referred to as the *defendant*, informs him of his legal rights, appoints legal counsel on his behalf if necessary, and sets the conditions for his release from jail (if not previously released at the booking phase). A defendant may be released on his *own recognizance* or by posting bail. A defendant released on his own recognizance is not required to post any money and is released on the basis of a promise to appear at future court proceedings. Bail is set by the judge according to the seriousness of the offense, prior criminal record, and the likelihood that based on community ties, the defendant will appear in court as required. Bail is forfeited and a warrant issued for the re-arrest of any defendant released on bail, or his own recognizance, who fails to appear at a required proceeding. Defendants released after the initial appearance are ordered to adhere to certain restrictions set by the Judge.

See Guide Insert, "Exercising Your Rights – Arrest" for a listing of your rights during this stage.

INITIAL COURT PROCESSING

Determining Probable Cause ... Grand Jury/Preliminary Hearing

A prosecutor may prefer, under some circumstances, to bring charges through the state or county *grand jury* rather than by criminal complaint. The grand jury is a panel of citizens charged with reviewing the evidence of criminal behavior and deciding if *probable cause* exists to believe that the suspect committed the crime. Probable cause is a set of facts, information, circumstances or conditions which would lead a reasonable person to believe that what is presented or alleged is true. If the grand jury determines there is probable cause that a crime was committed and that the suspected perpetrator committed the crime, a criminal "indictment" (charging document) is signed and an arrest warrant or summons to appear for arraignment is issued by the court.

In felony matters that begin with the prosecutor filing a complaint, a *preliminary hearing* is held before a Justice of the Peace to determine if there is probable cause to hold the defendant for trial. (A probable cause determination is not necessary if the offense charged is a misdemeanor). At a preliminary hearing the judge, rather than a grand jury, hears all of the evidence and testimony from the witnesses called by the prosecuting attorney and, if permitted by the Court, witnesses can be called by the attorney for the defendant.

Charges may be dismissed at the grand jury or preliminary hearing stage if the grand jury or Justice of the Peace determines that the evidence is insufficient to justify a trial. If probable cause is present, however, the defendant is "bound over" for trial in the Superior Court, and an arraignment date is set. This step is recorded by a charging document -- either the indictment issued as a result of the grand jury hearing or an "information" that is filed following the preliminary hearing. The court then issues a summons for the defendant to appear at arraignment in Superior Court.

Answering the Charges ... The Arraignment

The first appearance of the defendant in Superior Court is called an *arraignment*. At an arraignment proceeding, the defendant is officially informed of the formal charges against him (indictment or information). The defendant may plead "guilty" or "no contest" (a plea of neither guilt nor innocence), in which case the judge will set a date to sentence the defendant. If the defendant pleads "not guilty," a decision is made whether to appoint an attorney for him, and the matter is set for a pre-trial hearing or trial.

Note: Many limited jurisdiction courts (Municipal and Justice of the Peace Courts) combine the initial appearance and arraignment, resulting in one court appearance instead of two.

See Guide Insert, "Exercising Your Rights – Initial Court Processing" for a listing of your rights during this stage.

PREPARING AND BUILDING THE CASE ... PRE-TRIAL ACTIONS/HEARINGS

After the arraignment but before trial, many activities occur while both the prosecuting and defense attorneys build their case for trial. These activities are guided by Arizona Rules of Criminal Procedure, which define how the pre-trial process must work. For example, each party must disclose information in its possession to the other party (called discovery). Each side examines the evidence, reviews police reports and other documents, and interviews witnesses. Victims do not have to consent to interviews with the defense attorney; other witnesses must.

There may also be several court hearings scheduled, called Status Conferences or Pre-Trial Conferences or Hearings. These hearings usually focus on legal matters regarding the admissibility and suppression of evidence, modifications to the defendant's pre-trial release, plea negotiations, and other matters of concern to the attorneys or court, including the scheduling and rescheduling of the trial itself.

See Guide Insert, “Exercising Your Rights – Pre-trial Actions/Hearings” for a listing of your rights during this stage.

RESOLVING THE CHARGES

Plea Agreement

The vast majority of criminal cases making their way through the criminal justice process never go to trial. What occurs more often is a process whereby the defense attorney and the prosecutor work out a mutually satisfactory disposition of the case, subject to court approval. If the attorneys reach an agreement, there is usually some modification to the original charges; the defendant may plead guilty to a lesser charge; some charges may be dismissed; an agreement to not file additional charges may be made, and/or a particular sentence may be agreed upon (called stipulating). If both sides agree to a negotiated settlement, a *change of plea hearing* is scheduled. At a change of plea hearing, the defendant enters a guilty plea and signs a statement that his plea is voluntary and that he agrees to waive certain rights. If the agreement is acceptable to the court, the judge then finds the defendant guilty and schedules a date for sentencing.

Trial

If a plea agreement is not reached, a case may go to trial. The trial will be held before a Superior Court Judge and a panel of jurors unless the defendant waives his right to a jury trial, in which case the trial would be held before the judge alone (called a bench trial). All parties to the case, including witnesses for the prosecution and defense, are subpoenaed in advance to testify (sent a summons to appear); and, if it is to be a jury trial, juror selection (called *voir dire*) must take place before testimony begins. The State, represented by the prosecutor, has the burden of proving beyond a reasonable doubt that the defendant committed the crime(s) as charged.

When the court is ready for trial to begin, the prosecuting attorney gives an *opening statement*, an overview of the facts to be presented. The opposing (defense) attorney may present opening remarks or may reserve an opening statement until later in the trial when the defendant's side of the case is presented. The prosecutor begins the State's case by calling witnesses and asking them questions under *oath* (called examining). The prosecutor's evidence is aimed at proving the defendant committed the crime.

Witnesses take an oath that what they will say in court is the truth. All evidence presented in court, including testimony and physical evidence such as documents, items or articles of clothing, must comply with Arizona Rules of Evidence. The judge decides what evidence and testimony is admissible according to the Rules.

When the prosecution has finished questioning each witness, the defense is allowed to *cross-examine* the witness on any relevant matter. After cross-examination, the attorney who originally called the witness to the stand may wish to ask additional questions of the witness to clarify something touched upon in the cross-examination. This is called re-direct examination, and is followed by an opportunity for the opposing attorney to re-cross-examine. When the prosecution has called all the witnesses for its side of the case and presented all its evidence, the prosecution rests its case.

At this point, the defendant's attorney may ask the court to decide the case in the defendant's favor because the prosecutor has not presented sufficient evidence to prove the case against the

defendant. This is called a request for a judgment of acquittal or directed verdict. If the judge agrees that the State's evidence is insufficient, he rules in favor of the defendant, and the case is at an end. If a judgement of acquittal is not requested, or if the request is denied, the defense then has the opportunity to present its own evidence.

The defense may choose not to present any evidence, because it is not required to do so. A criminal defendant is not required to prove his innocence; the prosecution is required to prove the defendant's guilt beyond a reasonable doubt. If the defense does present a case and call witnesses, the same rules and procedures which governed presentation of evidence by the prosecution apply to evidence presented by the defense. The only difference is that the defense calls the witnesses and questions them first. At the conclusion of the defendant's case, the prosecutor may present additional information to rebut, or contradict, evidence offered by the defense. Following this, the defense is given another opportunity to present additional evidence.

When both sides have presented all of their evidence, each is permitted to make *closing arguments*. Closing arguments are similar to opening statements. They provide an opportunity for the attorneys to address the jury (or the judge in a bench trial) one final time. The prosecutor speaks first, usually summarizing the evidence that has been presented and highlighting those items most beneficial to its case. The attorney for the defendant speaks next. The attorney for the defendant will usually summarize the strongest points of the defendant's case and attempt to point out flaws in the State's case. The prosecutor is then given one last opportunity to speak.

At the end of a jury trial, the judge gives instructions to the jurors concerning laws that apply in the case. Jury members are required to follow these instructions in reaching a verdict. The jury goes to a private jury room and elects a foreman to lead the deliberations. Jurors must consider all the evidence, resolve any conflicts about the facts of the case, and reach a verdict of guilt or innocence. When the jury has reached a decision, the court is called back into session. The foreman reports the verdict to the judge, and either the judge or court clerk reads the jury's verdict. The court then enters a judgment according to the verdict, and the jury is released from duty. If found not guilty, the defendant is released. If the defendant is found guilty, a date is set for sentencing. If the jurors cannot reach a verdict the case ends in a "hung jury" and the prosecutor can decide to retry the defendant with different jurors.

See Guide Insert, "Exercising Your Right – Resolving Charges" for a listing of your rights during the plea and/or trial stage.

SENTENCING

A defendant is sentenced after he is convicted. Conviction includes a judge's finding of guilt after a bench trial, a verdict of guilt after a jury trial, or a defendant's change of plea to *guilty* as part of a plea agreement.

Several weeks before the sentencing hearing, the judge will order a *presentence investigation* by the county probation department, an arm of the Superior Court. The product of this investigation is a presentence report prepared by a probation officer. The judge receives this report prior to the hearing date and considers all the information contained in it to arrive at a sentencing decision. The report focuses on the defendant and typically includes: the circumstances of the offense, the defendant's history of criminal activity, if applicable, social and employment history, family status, economic and educational status and personal habits. The report is very important to victims too. The report provides the victim an opportunity to express his views regarding the emotional, physical and financial effects and impact of the crime, his opinions about sentencing, and how much restitution the defendant should be ordered to pay.

In some cases, the court may schedule one or more presentence hearings to consider issues related to *restitution, aggravating and mitigating circumstances* or other issues of concern to the

attorneys or the court. At a restitution hearing, the court considers matters relevant to compensating victims for their actual financial losses as a direct result of the crime. At an aggravation/mitigation hearing, the court considers the circumstances of the crime and of the defendant's history that could justify a lesser or greater sentence. Testimony and other evidence can be presented at any pre-sentence hearing.

At a sentencing hearing, the judge hears arguments, and sometimes, additional evidence from both the prosecution and defense, regarding the punishment the defendant should receive. The judge also hears statements from victims. The defendant, too, may make a statement to the court. In Arizona, the Legislature has established a range of sentences for various crimes and the judge must impose a sentence within that range. The judge may order the defendant to probation, to jail, to prison, or to a combination of punishments, including fines, and must order payment of any restitution that is owed to the victim(s).

See Guide Insert, "Exercising Your Rights – Sentencing" for a listing of your rights during this stage.

OFFENDER CUSTODY, SUPERVISION, AND RELEASE

What happens to a defendant after sentencing depends upon the sentence imposed. An offender's sentence encompasses all of the orders made by the judge at the sentencing hearing. A variety of government agencies and institutions exist to carry out sentencing orders.

Incarceration

Offenders who are sentenced to *incarceration* are ordered to serve time in either a county jail or prison. Care, custody and control of the offender (inmate) lies with a county sheriff (jail), or the Arizona Department of Corrections (prison), commonly referred to as DOC. The length of an inmate's incarceration depends primarily upon two factors: 1) the sentence itself, and 2) when the crime occurred and the laws that were in effect at that time. A sentence of *time served* means that an inmate's period of incarceration is equal to the time he has already been held in custody for the crime. *Credit* for time served reduces the full period of incarceration by the amount of time already served in custody for the same offense.

Release

Offenders sentenced to prison for crimes committed in 1993 or earlier may at some point in their sentence become eligible for *parole*, a form of early release. In contrast, most defendants sentenced for crimes committed after 1993 are subject to mandatory sentencing laws. These laws require defendants to serve at least 85% of their sentence in prison, followed by a term of *community supervision* equal to 15% of the total prison term. Parole and community supervision are forms of supervised release determined by the Arizona Board of Executive Clemency (formerly the Arizona Board of Pardons and Paroles), in which the offender is required to report on a regular basis to a state parole officer and must abide by strict rules of conduct. Inmates may also be eligible for various types of release, such as work furlough or home arrest, determined by the Department of Corrections.

Suspended Sentence/Probation

In some cases, a judge may decide to *conditionally suspend* a sentence of incarceration, contingent upon the offender's successful completion of a period of *probation*. Probation is a form of community supervision in which the offender is required to report on a regular basis to a county probation officer and abide by specified rules of conduct. If the probation, which can be "standard" or "intensive," is completed successfully, the sentence of incarceration is not imposed. If the probation is violated, it can be revoked and the sentence carried out.

Other common sentencing orders include: *community service* which requires that an offender complete a designated number of hours of work in the community; *payment of restitution* which is an order for the offender to pay his victim(s) for any financial losses directly resulting from the

crime; payment of *court fines or penalties*; and attendance and participation in individual or group *counseling*. Enforcement of court sentencing orders is typically incorporated as terms of probation and/or parole/community supervision.

See Guide Insert, “Exercising Your Rights – Custody, Supervision, and Release” for a listing of your rights during this stage.

POST-CONVICTION APPEALS

Defendants convicted of a criminal offense have a statutory right to *appeal*. Generally speaking, a direct appeal is an action taken by a defendant that asks a higher court to review the decision of a lower court. The defendant, or the defendant's attorney, is seeking to have the conviction and/or sentence overturned or modified. Appeals from decisions of non-record courts (Justice of the Peace and some Municipal Courts) are made to the Superior Court. Appeals from decisions of the Superior Court, where all state felony convictions occur, are made to the state Court of Appeals. The Arizona Supreme Court, Arizona's highest court, may choose or decline to review a decision of the Court of Appeals when a party files a petition for review. The Supreme Court hears all direct appeals in cases in which a death sentence is imposed.

Appeals Process

When a *direct appeal* is filed, the trial court sends the official case records to the next higher court. The appropriate appellate court reviews matters of law in making its decision; no witnesses are called nor testimony taken in the appellate court. The matters of law reviewed include whether the defendant's due process rights and other applicable laws and procedures were followed during the investigation, trial, and sentencing phases of the criminal justice process. The Attorney General serves as the prosecutor for almost all direct appeals filed in criminal cases in Arizona. When the appropriate records and attorneys' written arguments, called briefs, have been received by the court, the case is considered to be *at issue* and is assigned to a panel of three appellate judges for consideration. The defendant's brief contains legal arguments as to why the decision of the trial court should be reversed or modified. The State responds to these issues with arguments and legal authority typically supporting the trial court's decision. After they have reviewed the records, the Court of Appeals judges may hear oral arguments by the attorneys before issuing a written decision. An appellate court does not conduct a new trial on the case it hears. It reviews only the existing papers, exhibits and transcripts from the trial court. The documents are called the *record on appeal*, and are reviewed to determine whether the trial court made a proper decision.

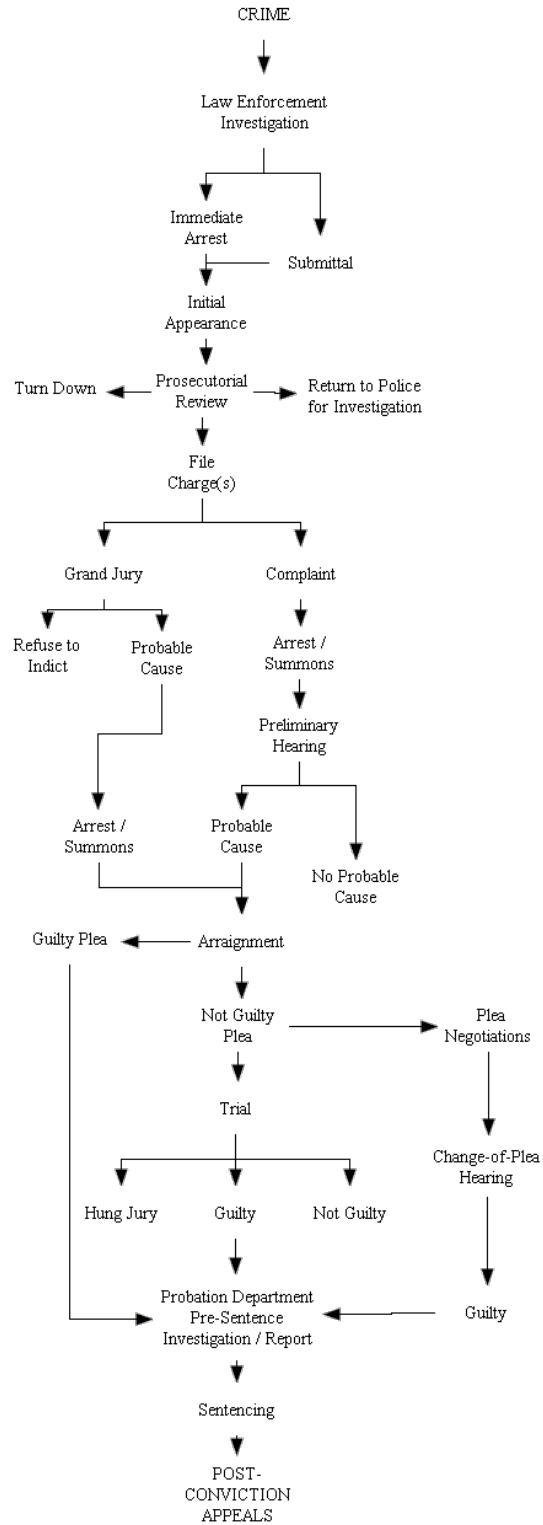
In deciding a case, Court of Appeals judges have several options, which include the following and/or a combination: 1) *affirm* the defendant's conviction(s) and sentence(s); 2) *affirm* the defendant's conviction(s) *but disagree* with the sentence and therefore either change the sentence or remand (send back) the case to the trial court for re-sentencing; 3) *reverse* the defendant's convictions and sentence and remand to the trial court for further action or a new trial.

Post-Conviction Relief

As of November 1992, persons convicted by way of plea agreements are not entitled to a direct appeal as described above. However, these defendants may petition the original trial court for *post-conviction relief*. A petition for post-conviction relief is a request by the convicted defendant to overturn the conviction or sentence based on various, yet specific grounds including, constitutional rights violation(s), new evidence, or excessive punishment. If the trial court denies the petition, the defendant can appeal the issue(s) to a higher court, similar to a direct appeal.

See Guide Insert, “Exercising Your Rights – Post-Conviction Appeals” for a listing of your rights during this stage.

CRIMINAL JUSTICE CASE FLOW



RESTITUTION OVERVIEW

Restitution is not punishment, it is a *court order* to a convicted defendant to pay you for the losses you incurred as the direct result of the crime(s) committed by the defendant. In ordering restitution, the court must consider all of your economic losses caused by the criminal offense(s) for which the defendant is convicted. Restitution is most often ordered at the time of sentencing and may include: medical expenses, funeral costs, expenses for counseling, moving and basic living necessities, lost or damaged property, and lost wages. It is important that you provide the prosecutor an indication of your economic loss(es) early in the prosecution of the case so that your restitution interest can be fully considered and advocated.

Restitution is mandatory. That is, the court is required by law to order the defendant convicted of a crime to reimburse the victim(s) for the victims' economic losses that resulted directly from the crime. The sentencing judge is also required by law to consider the defendant's economic circumstances (ability to pay) when entering an order for restitution. This means, for example, that if a defendant is convicted of stealing your \$9,000 car, the judge must order him to pay \$9,000 in restitution to you. Because of the defendant's ability to pay, however, the judge may also order that the defendant's method of paying the \$9,000 be monthly payments of \$30. A monthly court-ordered restitution payment of \$30, on a full restitution order of \$9,000, would require 25 years of regular payments for the economic loss to be fully recovered. Unfortunately, this means that restitution as a reliable form of reimbursement for victim losses, even though it is court-ordered often becomes improbable.

A defendant who is ordered to jail or prison, with rare exception, will not be required to begin making restitution payments until his release. The Court may order that restitution be paid within a certain period of time, or it may order that payments be made in specified (monthly) installments as noted in the above example. A probation officer, or other agent with responsibility for monitoring restitution payments of a defendant serving a probation sentence, is required to notify the supervising court upon finding that a defendant has become two full (monthly) payments in arrears. This notification (memorandum) must: 1) propose a modification to the monthly payment amount; 2) recommend that probation be revoked; or 3) outline the reasons for the delinquencies and how long it is expected to continue. (Victims have the right, and can request, to receive a copy of this memorandum from the court that explains the delinquency.) If you have requested post-conviction victims' rights notification, the county Superior Court Probation Department will inform you of any scheduled hearings that relate to, or could impact restitution. You have the right to be present and to express your opinion to the court at such hearings.

Defendants are required to make their court-ordered restitution payments to a county's Clerk of the Superior Court. The Clerk's Office is required to process restitution monies within 15 days, in turn, making payments (disbursements) to all victims who suffered financial loss. If the amount of any single disbursement to a victim would be less than \$10, the Clerk's Office may withhold payment until a minimum of \$10 is collected. Disbursement of restitution monies to victims, in no event however, should go beyond 90 days following receipt of payment from a defendant.

Restitution Lien

If you are entitled to restitution by court order, you have the right to file a restitution lien against any assets (personal and real property) held by the defendant. The filing of a lien gives notice to all persons dealing with the defendant or dealing with the property identified in the lien, of your interest in that property, or property later acquired in the name of the defendant. The advocates of the Office of Victim Services can assist you with filing a restitution lien if you are a victim in a case handled by the Attorney General's office, or by providing a self-lien packet.

Criminal Restitution Orders

A criminal defendant's restitution obligation to you ends when they have served their sentence. When this occurs, and restitution has not been fully paid, the court can enter a "criminal restitution order" for the unpaid balance. This order may be recorded and enforced as any civil judgment, never needs to be renewed and is not dischargeable through bankruptcy. You should contact the prosecuting attorney to request assistance in obtaining a copy of this order at the time the sentence expires.

CIVIL LEGAL REMEDIES FOR CRIME VICTIMS

In addition to court-ordered restitution and county victim compensation as two means for recovering financial losses resulting from your victimization, civil litigation may be another option for you. You may choose through civil action, which is entirely independent of a criminal prosecution, to bring a lawsuit against your perpetrator(s) or other responsible parties to recover damages for both economic and non-economic losses. With respect to weight of evidence in a civil matter, you need only prove your case by a preponderance of the evidence. This means that you need only prove that it is *more likely than not* that the defendant is liable for the claims set forth in your complaint. (By comparison, a criminal prosecutor has the burden of proving *beyond a reasonable doubt* that a defendant is guilty of the crimes charged.) While you may file a civil lawsuit yourself, it is likely you will find it advantageous to seek the assistance of an attorney. The Attorney General's Office cannot assist you with a civil lawsuit, nor advise you in your decision to pursue it. We can, however, send you information prepared by the U.S. Office for Victims of Crime (OVC) that we believe you will find very useful in making a decision about this course of action. To request a copy of the OVC Bulletin, *Civil Legal Remedies for Crime Victims*, call the Office of Victim Services at (602) 542-4911 in Phoenix, or (520) 628-6456 in Tucson.

COMMON QUESTIONS

THE CRIME AGAINST ME HAS BEEN DEVASTATING. WHERE CAN I GET HELP?

All victims experience some type of psychological distress in the aftermath of crime. Normal immediate reactions are fear, anger, shame, self-blame, helplessness, and depression. Long-term reactions can include sleeplessness, loss of concentration, and fear of being alone. The type of crime does not determine if there is an effect, but often determines the degree of the effect. Help and assistance are available. Please see the *Victim Assistance* insert in this *Guide*.

I'M SCARED THAT THE PERSON WHO DID THIS TO ME IS GOING TO HURT ME AGAIN. WHAT CAN I DO TO PROTECT MYSELF?

If you have been the victim of domestic violence it is likely that crimes such as assault, abuse and threats could occur again. A law enforcement officer need only have probable cause to believe that an act of domestic violence has occurred to make an arrest of the abuser. You can also obtain a court Order of Protection which protects spouses, cohabitants, and close relatives from each other. An Injunction Against Harassment protects you from anyone else who is harassing you. Both can be filed by any adult without an attorney in any court. (If you are in the process of a legal separation or dissolution of marriage, you must apply to the Clerk of the Superior Court for an Order of Protection). You will be asked to fill out a petition stating why you want the Court to grant the Order or Injunction (you may request that your address be kept confidential). Orders or Injunctions can serve to keep the other party from having any contact with you, your family and friends; prohibit further offenses; and can provide you other relief necessary for your protection.

WILL I HAVE TO TESTIFY?

As the victim of a crime, you may also be a witness. As a victim/witness you may be called to testify. Either the prosecutor or the defense attorney may subpoena you to testify. The decision whether you will be subpoenaed (required) to testify is determined by the attorneys. They will make this decision after evaluating all relevant facts and case evidence. Your advocate will keep you informed on the progress of your case and contact you if it is determined that your testimony will be needed.

I DISAGREE WITH THE DECISION TO PLEA BARGAIN (OR, THE PLEA OFFER ITSELF). WHAT CAN I DO?

A victim of a crime has the right to confer with the prosecutor on any plea negotiation and to be present and heard at any plea hearing. The victim does not, however, have the right to direct prosecution of the case. If you disagree with the plea agreement, you are encouraged to exercise your rights to talk to the prosecutor, and to attend the plea hearing and voice your opinion to the judge.

IT SEEMS LIKE THIS CASE HAS GONE ON FOREVER. WHY DOES IT TAKE SO LONG?

Our country's system of bringing an accused person to justice is very complex. Hearings may be set, rescheduled and/or continued for a variety of reasons pertinent to the process of ensuring a fair and unbiased process. You have a statutory and constitutional right, however, to a speedy trial or disposition, and the court must consider this right and your views in deciding requests for continuances in criminal proceedings. If a continuance is granted, the court must state the reason for the continuance on the record.

WHAT IS THE DIFFERENCE BETWEEN RESTITUTION AND COMPENSATION?

Restitution is an order by the court that a convicted defendant pay you for the losses you incurred as a result of the crime(s) committed by the defendant. Compensation refers to a state program administered in each county that allows victims of violent crime to apply and receive money for certain costs that are the direct result of the crime.

THE COURT ORDERED THAT I BE PAID RESTITUTION. WHEN WILL I GET MY MONEY?

Restitution payments are typically ordered to begin two to four months after sentencing or after the defendant's release from jail or prison. Unless the court directs otherwise, restitution payments are made to the Clerk of the Superior Court, who in turn, disburses payments to the victims. The Clerk's Office is required to process restitution monies within fifteen days. If the amount of any single payment to a victim would be less than \$10, the Clerk's Office may withhold payment until a minimum of \$10 is collected. Disbursement of restitution monies to victims, in no event however, should go beyond 90 days following receipt of payment from a defendant. You may contact the county Clerk of Court to inquire about the status of restitution payments owed to you. (See last insert for phone number of Superior Court Clerk.)

WILL THE DEFENDANT SERVE THE FULL SENTENCE IMPOSED BY THE JUDGE?

Defendants ordered to serve a term of incarceration will be eligible for early release unless the Judge orders the defendant to serve the full sentence. A defendant's eligibility for release is based on legislation current at the time the offense was committed. If you have requested post-conviction notification from the Department of Corrections, that agency should inform you of the earliest possible release date. Many defendants are eligible for an early release. One type of early release is parole or community supervision by the Board of Executive Clemency (formerly the Board of Pardons and Paroles).

WHAT DOES IT MEAN IF THE DEFENDANT IN MY CASE APPEALS HIS CONVICTION?

If a defendant thinks that the factors used in determining a conviction caused him to be wrongly punished or convicted, or thinks the sentence received is too severe, he can file an appeal. The filing of an appeal means that the defendant is exercising his lawful right to ask that a higher court review the outcome of his case. If you want to remain informed of post-conviction appeals, it is important that you complete and submit the multi-part notification request form provided by the prosecuting agency after sentencing.

IS THE PROSECUTOR MY LAWYER?

The prosecutor is the lawyer for the State and is required to represent the interests of the State. He is also required to inform the judge of your wishes concerning release of the defendant, the defendant's sentence and your need for restitution when you have informed the prosecutor and asked him to convey that to the judge. The prosecutor must keep you informed of the progress of the case and afford you the opportunity to confer with you about any plea agreement that may be offered to the defendant. It is important to understand, however, that the prosecutor is not your lawyer and cannot act as your sole legal representative. In most instances, the State's interest (prosecutor's) and your interests will coincide and cause no conflict. In rare instances where there is a conflict between what you want and what the prosecutor intends to do, the prosecutor will inform you of the conflict and advise you that you may get your own attorney.

I FEEL MY RIGHTS HAVE BEEN VIOLATED. WHAT CAN I DO ABOUT IT?

As the victim of a crime, you have the right to seek an order or to bring a special action mandating that you be afforded any right not provided, or to challenge an order denying any right guaranteed to you under the Constitution, implementing statutes, or court rules. You have the right to recover damages from a governmental entity responsible for the intentional, knowing or

grossly negligent violation of your rights. In asserting any right, you may choose to be represented by personal counsel at your expense. It is important to understand that a rights' violation is different than disagreeing with a case outcome (disposition), or maybe, even how a case was handled. An attorney can advise you accordingly. If you disagree with a court's order regarding restitution or a defendant's release, you do have the right to appeal these decisions. The prosecutor can assert these rights on your behalf, at your request. The office of Attorney General has a Victims' Rights Enforcement Officer (Ombudsman) that receives complaints of victims' rights violations and investigates them in a neutral and unbiased manner. If you feel the rights afforded to you by the Arizona Crime Victims' Rights statutes have been violated contact:

Office of Victim Services

Victims' Rights Enforcement Officer
1275 W. Washington St.
Phoenix, AZ 85007
(602) 542-8848
Fax: (602) 542-8453
Toll Free: (866) 742-4911

You may file a complaint online by going to www.azag.gov or email victimrights@azag.gov

CASE INFORMATION

Offense Date: _____

Agency Reported to: _____ Phone Number: _____

Police Report Number: _____

Suspect/Defendant Name(s): _____

Date of Birth: _____

Initial Appearance Date: _____

Cause (CR) Number: Preliminary Hearing Date: _____

Prosecuting Agency: Internal Agency Case Number: _____

Prosecuting Attorney Name: _____ Phone Number: _____

Crime Victim Advocate Name: _____ Phone Number: _____

Defense Attorney Name: _____

Judge: _____

Phone Number: _____ Courtroom: _____

Pretrial Hearing Date(s): _____

Trial Date: Pre-sentence Hearing Date: _____

Pre-sentence Investigator: _____ Phone Number: _____

Aggravation/Mitigation Hearing Date: _____

Sentencing Date: County Clerk's Office: _____ Phone Number: _____

Probation Officer: _____ Phone Number: _____

Inmate (ADC) Number: Prison Unit: _____

Parole Officer: _____ Phone Number: _____

Other Names and Numbers: _____

Information in this guide is general and subject to change. Please contact your local Victim Awareness Assistance Program or the Attorney General's Office of Victim Services for changes in rules or laws that may have occurred since February 2009.